

Antonio Archuleta

Christian Banzet

Greg Francis

Andrew Madison

Raymond Prochnow

Larry K. Watkins

(2002) SPB Dec No. 02-01

In this Decision, the Board finds that any Stipulation for Settlement submitted to the Board for approval, that may have been entered into between the parties as a result of the parties having participated in a Board of Adjustment or arbitration process, must be accompanied by a statement indicating that the case had not gone through a Board of Adjustment or arbitration process. In those cases where the parties had participated in such a process, the Board will grant permission for the appellant to file a late appeal with the Board, thereby placing the matter back within the Board's jurisdiction.

Judith C. Beck (2002) SPB Dec. No. 02-02

In November 1999, appellant, while working as a janitor for CHP, injured her back. She went out on medical leave and filed a claim for workers' compensation. In 2000, appellant asked to return to her janitor's job. Because appellant did not present CHP with a release from her doctor and because she had not yet been cleared to return to work by the agreed medical examiner in her workers' compensation action, CHP denied appellant's request to return to work. Appellant appealed to the Board, asserting that CHP's refusal to allow her to return to work upon her request constituted a constructive medical termination.

In this Decision the Board finds that appellant, as a permanent civil service employee, has a constitutional property right in her job that cannot be denied by CHP on medical grounds unless CHP follows the procedures set forth in Government Code § 19253.5. When CHP received appellant's request to return to work, CHP was obligated to put appellant back to work. If CHP had concerns about appellant's ability to work, it should have engaged in an interactive process with her to determine whether she required a reasonable accommodation to perform the essential functions of her job, including whether she might need a reassignment. CHP could not simply deny appellant's request to return to work and hope that the workers' compensation system would resolve the matter. The Decision orders CHP to return appellant to work with back pay, benefits and interest, minus any salary and benefits she may have received while she was on leave.

Mark Chamberlain (2002) SPB Dec. No. 02-03

Appellant is employed as a permanent-intermittent (PIE) Psychiatric Technician for the Department of Mental Health. After a minor client accused him of patient abuse, the Department sent him home, initiated an investigation and did not call

him in to work for 6 months. He received an official reprimand that appears to be related to the incident, but patient abuse was not alleged. The adverse action was settled at hearing. Appellant then claimed he was entitled to 6 months' back pay on the theory that, in effect, the Department placed him on an administrative leave under Government Code § 19574.5.

In this Decision, the Board awards appellant back pay, finding that the Department's stipulation makes clear that appellant would have worked but for his being taken off the schedule in light of the investigation. The Decision also specifies that, if an employee is taken off work and is investigated for the types of issues listed in Government Code § 19574.5, that statute is automatically invoked, even if the Department does not explicitly invoke it.

Roseller Fraser (2002) SPB Dec. No. 02-04

Appellant was rejected during probation from a position with the Department of Rehabilitation. He filed an appeal of his rejection with the Board, and also exercised his mandatory reinstatement rights under Government Code section 19140.5 to his former position with the Department of Health Services. Appellant and the Department of Rehabilitation subsequently entered into a Stipulation for Settlement, whereby the Department of Rehabilitation agreed to withdraw the Notice of Rejection During Probation, and appellant agreed not to seek employment with that Department in the future. The Stipulation for Settlement, which was subsequently approved by the Board, specifically noted that, per the Board's precedential decision in Lisa Folsom (1994) SPB Dec. No. 94-28, appellant's mandatory reinstatement rights to his position with the Department of Health Services were not affected by the terms of the Stipulation for Settlement. The Department of Health Services thereafter notified appellant, the Department of Rehabilitation, and the Board that, the Board's decision in Lisa Folsom notwithstanding, appellant would be dismissed from his position with the Department of Health Services if the Stipulation for Settlement was not rescinded because, in the Department's view, the withdrawal of the Notice of Rejection During Probation voided appellant's mandatory reinstatement rights under Section 19140.5.

In this Decision, the Board clarifies its previous Decision approving the Stipulation for Settlement, and specifies that appellant was entitled to exercise his mandatory reinstatement rights under Section 19140.5 after he had been rejected during probation, that the subsequent Stipulation for Settlement did not serve to void those reinstatement rights, and that the Department of Health Services is not permitted to dismiss appellant from his position with that Department. In so doing, the Board reaffirms its Decision in Lisa Folsom.